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Proposals and contributions

Addendum

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II. Proposals and contributions

Argentina*

[Original: Spanish]

Argentina proposes that the following section be inserted after article 7 and the subsequent sections renumbered accordingly:

"(...) Trafficking in migrants by land

"Article (...)

"1. States Parties shall make provision in their respective legislations to establish the liability of commercial overland carriers for the transport of passengers and crew members, in conformity with the immigration law of the country of destination or transit. To that end, the legislation of States Parties shall provide that commercial overland carriers shall, as an absolute prerequisite for undertaking the carriage, demand all due documentation required for admission of their passengers to the territory of the State of destination or transit in any of the categories of admission stipulated in domestic immigration law.

"2. States Parties shall establish in their domestic legislation the obligation for commercial overland carriers, in cases of transit through one or more States, to declare the names of passengers whom they are transporting to the immigration authority competent for the latter. States Parties shall also adopt measures in their domestic legislation to render the commercial overland carrier responsible for the actual exit of such persons from the corresponding territories and shall provide that, in the event that passengers declared as being transported fail to leave the country in the manner, at the place and within the time limit stipulated in the immigration law of the transit country, the immigration authority of that country may arrange for the return of such persons at the exclusive cost of the carrier.

"3. It shall be possible for the provisions of this article not to apply within the territorial scope of economic unions, customs unions or free-trade zones that have specific regulations governing the entry into and movement of persons within such integrated geographical areas that do not conform to the provisions of this article.

"4. Any State Party that has sufficient grounds to believe that a commercial overland carrier is involved in activities related to trafficking in migrants may request the necessary assistance to counter such activities from the State Party in which that carrier is lawfully constituted, or in which the vehicles used by such carrier in the provision of its services are situated or registered, or in which such carrier has its actual place of business, in conformity with the legal provisions of the country concerned.

"5. States Parties shall establish ongoing cooperation mechanisms for the detection of any carriage of persons, from one country to another or in transit to a third country, undertaken by persons on an individual or organized, regular or occasional basis without due authorization, by a means of overland transport.

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* Amendment previously issued in document A/AC.254/5/Add.21.

"6. States Parties shall establish institutional cooperation mechanisms for the detection and punishment of freight carriers who engage in the smuggling of migrants.

"7. States Parties shall offer the fullest assistance with regard to the investigation of methods of overland trafficking coming within their jurisdiction. Authorities involved shall act with all due diligence in order to ensure that such assistance is furnished expeditiously with a view to avoiding any impairment of such cooperation."

Belgium*

[Original: French]

Article 7 ter: Safeguard clauses

Footnote 34 to article 7 *ter* in document A/AC.254/L.128/Add.2 should be expanded. Belgium suggests that article 7 *ter* be supplemented by article 110, paragraph 3, of the United Nations Convention on the Law of the Sea of 1982, the text of which would be reproduced there *in extenso*:

"If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained."

Cameroon**

[Original: French]

Article 8: Compliance measures and arrangements

Paragraph 2 (a)

1. Delete the word "illegal" before the word "smuggling", this qualification being redundant.

Article 11: Prevention

Paragraph 1

2. Delete the words "and seizing", since the operation of inspection is deemed sufficiently rigorous for the prevention stage.

Article 14: Training

Paragraph 3

3. Paragraph 3 should become article 14 *bis* and read as follows:

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* Amendment previously issued in document A/AC.254/5/Add.21.

** Amendments previously issued in document A/AC.254/5/Add.21.

"Article 14 bis
"Technical cooperation

"Each State Party shall make every effort to provide the necessary resources, including vehicles, computer systems and document readers, to combat the smuggling of migrants. States Parties with relevant expertise shall provide technical assistance to States lacking such expertise."

Article 15: Return of smuggled migrants

Paragraph 1

4. It would be advisable to reword this paragraph in the light of international human rights standards, the economic potential of each State and the length of stay of each migrant.

China*

[Original: English]

New article

After article 11, add a new article as follows:

"Article (...)
"Measures to eliminate the root causes

"States Parties shall ensure the strengthening of international cooperation in order to eliminate the root causes of the smuggling of migrants, such as poverty and underdevelopment."

Colombia

[Original: Spanish]

Preamble

1. It is proposed to amend paragraph (i) to read as follows:

"(i) *Also convinced* that, to counter this phenomenon, a global and regional approach, including socio-economic measures, is necessary in order to improve the situation of vulnerable population groups in the countries of origin,"

2. It is proposed to add a new preambular paragraph after paragraph (k) as follows:

"(...) *Taking note* of the conventions and other relevant instruments of the United Nations on the protection of migrants,"

Article 11: Prevention**

3. It is proposed to add a new paragraph after paragraph 2 as follows:

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* Amendment previously issued in document A/AC.254/5/Add.21.

** Amendment previously issued in document A/AC.254/L.183.

"(...) With a view to discouraging and preventing the smuggling of migrants, States Parties shall seek, where appropriate, to conclude bilateral or multilateral agreements aimed at ensuring orderly migration."

France*

[Original: French]

Article 9: Additional legislative and administrative measures

It is proposed that article 9 should read as follows:

"Article 9
"Other measures

"1. States Parties shall take appropriate measures to ensure that means of transport operated by commercial carriers are not used in the commission of offences established under article 4 of this Protocol.

"2. Such measures shall include the establishment, without prejudice to the international conventions applicable, of the obligation that commercial carriers, including any transportation company or the owner or operator of any vessel or vehicle, screen all passengers travelling by land, sea or air in order to ascertain that they each have a valid passport and visa, if required, or any other documentation necessary for legal entry into the receiving State.

"3. States Parties shall take the necessary measures, in conformity with their domestic law, to provide for penalties in cases of violation of the obligation set out in paragraph 2 of this article. Such sanctions may include fines and forfeiture of the vehicles or means of transport used."

Germany**

[Original: English]

Article 7 ter: Safeguard clauses

Paragraph 4

1. Add the words "When taking such action against a ship," at the beginning of subparagraph (a), and reverse the order of subparagraphs (a) and (b). The reason for this addition and the reversal of the subparagraphs is that, as the text now stands, States simply cannot comply with what is required. They cannot "ensure the safety and humane handling of the persons on board" as such and in general, except if and when they take action against the ship.

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* Amendment previously issued in document A/AC.254/5/Add.21.

** Amendments previously issued in document A/AC.254/5/Add.21.

Article 10: Information

Paragraph 3

2. After the words "States Parties" add the words ", in particular those with common borders or located along smuggling routes,".

Holy See*

[Original: English]

Article 11: Prevention

The following paragraphs should be added at the end of the article:

"(...) States Parties shall foster development programmes and cooperation at the national, regional and international levels, paying special attention to economically and socially depressed areas, in order to combat the root socio-economic causes of the trafficking in migrants.

"(...) States Parties shall encourage cooperation on immigration and asylum policies and shall adopt such global migration strategies as may be necessary to prevent trafficking in migrants."

India*

[Original: English]

Article 4: Criminalization

Paragraph 2

Replace paragraph 2 with the following:

"2. Each State Party shall also adopt such legislative or other measures as may be necessary to establish as a criminal offence the following conduct:

"(a) Organizing, directing, aiding, abetting, facilitating or counselling the commission of an offence set forth in paragraphs 1 and 2 of this article;

"(b) Attempting to commit an offence set forth in paragraphs 1 and 2 of this article;

"(c) Participating as an accomplice in an offence set forth in this article; or

"(d) In any other way contributing to the commission of an offence set forth in this article."

* Amendment previously issued in document A/AC.254/5/Add.21.

Libyan Arab Jamahiriya*

[Original: Arabic]

Article 7: Measures against the smuggling of migrants by sea

Paragraph 6

1. In the second sentence, provision is made for the exception of necessary actions "to relieve imminent danger". The phrase used lacks clarity and should be replaced with the words "except those which might be taken in implementation of existing binding agreements".

Paragraph 7

2. The words "or, where necessary, authorities," are not useful and should be deleted.

Paragraph 8

3. In the first sentence, replace the word "concluded" with the word "classified", because "concluded" is ambiguous and not defined.

Paragraph 9

4. The right of inspection by a State Party should be restricted by an obligation to notify the State Party of which the vessel claims registry, if it is found that the vessel in effect belongs to a State Party, before continuing the inspection or taking any necessary measures.

Article 8: Compliance measures and arrangements

Paragraph 2

5. The Libyan Arab Jamahiriya suggests the deletion of subparagraph (b), because enhancing the provisions of the Protocol will be a sine qua non once the Protocol comes into force, so there will be no need for such a provision.

Article 9: Additional legislative and administrative measures

6. In the first sentence, the word "administrative" should be used instead of the word "legislative", in line with the wording of paragraph 1 of article 8.

7. In the second sentence, the reason for using the word "forfeiture" should be clarified, because it is ambiguous here.

Article 10: Information

Paragraphs 1 and 2

8. Paragraphs 1 and 2 should be merged, because their meaning is identical. The revised paragraph should read as follows:

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* Amendments previously issued in document A/AC.254/5/Add.21, based on the text of the revised draft Protocol contained in document A/AC.254/Add.1/Rev.2.

"Pursuant to article 22 of the Convention, States Parties shall cooperate in the field of public information with a view to preventing potential migrants from becoming victims of criminal organizations by increasing public awareness of the fact that smuggling of migrants is a criminal activity frequently perpetrated by criminal organizations for profit and that it poses serious risks to those involved."

9. In subparagraph (e), the word "also" should be added after the words "practices and".

Article 14: Training

Paragraph 2

10. Subparagraph (a) should be deleted because it duplicates article 12.

Paragraph 3

11. The words "potential tools" should be used instead of the word "resources", because the articles listed in the text are not resources but potential tools.

Article 15: Return of smuggled migrants

Paragraph 1

12. Add at the end of the paragraph the words "whenever such return poses no risk to his or her life and protects him or her from any illegal harm that might be incurred upon return".

Article 16: Implementation

13. Paragraphs 1 and 2 should be merged to read:

"For the purpose of examining the progress made by the States Parties in achieving the implementation of the obligations undertaken in the present Protocol, the States Parties will provide periodic reports to the Conference of the Parties to the Convention. States shall provide such reports together with the reports submitted in accordance with article 23 of the Convention and on the same dates."

Lithuania*

[Original: English]

Article 9: Additional legislative and administrative measures

1. Lithuania would like to point out that, on the basis of the *non bis in idem* principle, the sanctions provided for in article 9 may be applied to commercial carriers only in cases where no actions are brought against them for smuggling migrants. Lithuania ventures to express the view that the current wording of the article may leave it open to interpretation as stipulating that, on the basis of the same *non bis in idem* principle, commercial carriers guilty of smuggling migrants should bear administrative responsibility only and not be charged for smuggling migrants.

* Amendments previously issued in document A/AC.254/5/Add.21.

Article 10: Information

Paragraph 2

2. Paragraph 2 of article 10 of the draft Protocol would obligate States Parties to undertake preventive measures ensuring that potential migrants do not become victims of crimes committed by organized criminal groups. Lithuania would like to draw attention to the fact that the draft Convention could set obligations to take preventive measures ensuring the rights not only of potential migrants, but also those of migrants in the process of being transported and migrants who have already been transported.

3. In the opinion of Lithuania, the use of the term "victim" raises some doubts. The term "victim" suggests illegal violence used against a person. Lithuania therefore considers that in a case where a migrant may be considered the victim of a crime, the crime itself shall be recognized as trafficking in persons and not as smuggling migrants.

Mexico*

[Original: Spanish]

1. It is proposed to add the following paragraphs after article 3 *bis*:

"2. The relatives of the migrant shall not become punishable for acts, committed by an organized criminal group of which the relative is not a member, whose purpose is the illegal trafficking in and transporting of that migrant.

"3. The relatives of the migrant shall not become punishable by reason of the profits obtained by an organized criminal group from those relatives as a result of the illegal trafficking in and transporting of that migrant."

2. It is proposed to add the following article after article 7 *quater*:

"Article (...)
"Implementation measures

"1. States Parties shall ensure that their law enforcement personnel and officers act with full respect for the person and dignity of those involved in the illegal trafficking in and transporting of migrants and shall dispense to them humanitarian treatment at all times, in particular to victims at the time of seizure or detention by reason of illegal trafficking and transport.

"2. States Parties shall grant migrants and their relatives access to the domestic courts and competent authorities for the purpose of instituting liability proceedings against a member or members of an organized criminal group for illegal trafficking and transport of which they are subject. Their domestic law shall provide for procedures in order that migrants and their relatives can obtain compensation for loss or damage sustained by them by reason of illegal trafficking and transport.

"3. States Parties shall make available to migrants and their relatives relevant information concerning judicial and administrative procedures for instituting liability proceedings against a member or members of an organized criminal group and for obtaining compensation.

* Amendments previously issued in document A/AC.254/L.160.

"4. States Parties shall afford due assistance to migrants whose health, person, life, safety or liberty is endangered by reason of illegal trafficking and transport.

"5. At the time of any seizure or detention, those involved in illegal trafficking and transport shall be informed of their right to the protection and assistance of the consular or diplomatic authorities of the State of which they are nationals."

Morocco*

[Original: French]

Morocco proposes the following text as either paragraph 6 of article 4 (Criminalization) or a new article 4 *bis*:

"(...) States Parties that have not yet done so shall adopt the necessary legislation or other measures to guarantee respect for and protection of the rights of migrants in irregular situations, as accorded under applicable international law, in particular the right to life, the principles of non-discrimination and *non-refoulement* and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment."

Netherlands*

[Original: English]

Article 11: Prevention

The Netherlands proposes to add a new paragraph at the end of the article:

"(...) With a view to promoting and accelerating cooperation between the relevant authorities, States Parties may conclude bilateral or regional agreements providing for the secondment of liaison officers from one State Party to relevant authorities of the other State Party. The liaison officer shall have the task of giving advice and assistance and of facilitating the secure and rapid exchange of information. He shall have no operational powers and shall respect the integrity of the host country."

Philippines*

[Original: English]

Article 12: Control of documents

1. The Philippines proposes to add a new paragraph at the end of the article:

"(...) States Parties shall adopt such measures as may be necessary to ensure the security of all materials used in the production of travel documents and shall, from

* Amendment previously issued in document A/AC.254/5/Add.21.

time to time, initiate innovations in these materials to upgrade the security of travel documents."

2. This is necessary to prevent organized criminal syndicates from manufacturing fake travel documents using materials similar to those used in the manufacture of genuine travel documents.

Singapore*

[Original: English]

Article 7 bis: Measures against the smuggling of migrants by sea

Paragraph 1

1. Singapore proposes to insert the words "in international waters" after the words "exercising freedom of navigation" in order to clarify the provision so as to ensure that the exclusive right of coastal States to exercise enforcement jurisdiction in territorial waters remains unaffected.

Paragraph 6

2. The words ", while in international waters," should also be inserted after the words "to suspect that a vessel" in paragraph 6, for the same reason as above, that is, to remove any ambiguity over the exclusive right of coastal States to exercise enforcement jurisdiction within territorial waters.

Article 7 ter: Safeguard clauses

3. Singapore proposes the insertion of a new paragraph after paragraph 5 of article 7 *ter* of the draft Protocol:

> "No action taken pursuant to articles 7 to 7 *quater* of this Protocol shall be taken in the territorial sea, except with the permission of the coastal State."

4. The current language of article 7 *bis* is somewhat ambiguous and potentially leaves open the possibility that the authorities of a third State Party may be authorized, by the terms of those provisions, to take enforcement action against a vessel suspected of being engaged in the smuggling of migrants within the territorial waters of another State Party.

5. The basic underlying principle is that it is the exclusive right of coastal States to exercise enforcement action within their own territorial waters. It is a shared concern of all delegations that the Protocol does not interfere in any way with the existing rights of coastal States.

6. Singapore therefore proposes to expressly restate the undisputed principle of international law, as set out in paragraph 3 above, to ensure that there is no ambiguity or doubt as to the implementation and application of the provisions, obligations and rights set out in articles 7 to 7 *quater* of the draft Protocol.

* Amendments previously issued in documents A/AC.254/L.153 and A/AC.254/5/Add.21.

Syrian Arab Republic*

[Original: Arabic]

Preamble

1. Remove the square brackets in subparagraphs (a), (c), (d), (f)-(h), (o) and (q).

2. After subparagraph (q), add a new subparagraph similar to the final subparagraph of the preamble of the draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the "Trafficking in Persons Protocol"), to read as follows:

> "(...) *Taking into account* the provisions of the United Nations Convention against Transnational Organized Crime,"

Article 6: Jurisdiction

Paragraph 1

3. Add the words "in accordance with their basic legal principles" after the words "shall take".

Article 7: Measures against the smuggling of migrants by sea

Paragraph 5

4. Delete the phrase "and to a request for authorization made pursuant to paragraph 3 of this article" because the phrase would obligate the State Party to respond to the requested authorization, while paragraph 3 of this article allows the flag State to authorize the requesting State to board and inspect the vessel and to take appropriate action.

Paragraph 14

5. The meaning of the words "operational arrangements in relation to specific cases" needs to be clarified.

Article 8: Compliance measures and arrangements

Paragraph 1

6. Add the words "in accordance with their basic legal principles" after the word "adopt".

Paragraph 2

7. Delete the word "illegal" in subparagraph (a), because trafficking is per se an illegal act.

Article 9: Additional legislative and administrative measures

8. Add the words "in accordance with their basic legal principles" after the words "shall take".

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* Amendment previously issued in document A/AC.254/5/Add.21.

9. The word "forfeiture" needs to be clarified.

Article 11: Prevention

10. The Syrian Arab Republic endorses the two paragraphs proposed by the Holy See for addition to this article (see above under Holy See).

Article 11 bis

11. The Syrian Arab Republic endorses new article 11 *bis*, proposed by China (see above under China).

Additional articles

12. Articles relating to the following issues should be added:

(a) Assistance for and protection of victims of trafficking in persons, in line with article 4 of the Trafficking in Persons Protocol;

(b) Status of the victim in the receiving State, in line with article 5 of the Trafficking in Persons Protocol;

(c) Seizure and confiscation of gains, in line with article 5 *bis* of the Trafficking in Persons Protocol.

United States of America*

[Original: English]

Article 9: Additional legislative and administrative measures

The United States of America proposes the following amended text for article 9:

"Article 9
"Other measures

"1. States Parties shall take legislative or other measures to ensure that means of transport operated by commercial carriers are not used in the commission of offences established under article 4 of this Protocol.

"2. Such measures shall include, where appropriate, the establishment, without prejudice to applicable international conventions, of the obligation that commercial carriers, including any transportation company or the owner or operator of any vessel or vehicle, screen all passengers travelling by land, sea or air in order to ascertain that they each have a valid passport and visa, if required, or any other documentation necessary for legal entry into the receiving State.

"3. States Parties shall take the necessary measures, in conformity with their domestic law, to provide for penalties in cases of violation of the obligation set out in paragraph 2 of this article. Such sanctions may include fines and forfeiture of the vehicles or means of transport used."

* Amendment previously issued in document A/AC.254/5/Add.21.

European Community

[Original: English, French and Spanish]

Article 9: Additional legislative and administrative measures

1. It is proposed that article 9 be revised to read as follows:

"Article 9
"Other measures

"1. States Parties shall [may] take appropriate [legislative or other] measures to ensure that means of transport operated by commercial carriers are not used in the commission of offences established under article 4 of this Protocol.

"2. Such measures shall [may] include [, where appropriate,] the establishment, without prejudice to applicable international conventions, of the obligation that commercial carriers, including any transportation company or the owner or operator of any vessel or vehicle, screen all passengers travelling by land, sea or air in order to ascertain that they each have a valid passport and visa, if required, or any other documentation necessary for legal entry into the receiving State.

"3. States Parties shall [may] take the necessary measures, in conformity with their domestic law, to provide for penalties in cases of violation of the obligation set out in paragraph 2 of this article. Such sanctions may include fines and forfeiture of the vehicles or means of transport used."

Article 11: Prevention

2. It is proposed that article 11 be revised to read as follows:

"Article 11
"Prevention

"1. ...

"2. Without prejudice to article 19 of the Convention, States Parties shall consider intensifying, in conformity with their respective national legislation, cooperation among border control agencies of the States concerned, even if those States are not Parties to this Protocol, in particular by establishing and maintaining direct channels of communication.

"3. With a view to promoting and accelerating cooperation between the relevant authorities, States Parties may conclude bilateral or regional agreements providing for the secondment of liaison officers from one State Party to relevant authorities of another State Party. The liaison officer shall have the task of giving advice and assistance and of facilitating the secure and rapid exchange of information. He shall have no operational powers and shall respect the integrity of the host country."